

2002

State of Utah v. Jose Orlando Valdovinos : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff-Appellee,

v.

JOSE ORLANDO VALDOVINOS,
Defendant-Appellant.

Case No. 20020410-CA

BRIEF OF APPELLEE

APPEAL FROM A SENTENCE FOR ONE COUNT OF AGGRAVATED
ROBBERY, A FIRST DEGREE FELONY, IN THE THIRD JUDICIAL
DISTRICT COURT, SALT LAKE COUNTY, THE HONORABLE ANN
M. BOYDEN PRESIDING

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Utah Court of Appeals

MAY 09 2003

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Case No. 20020410-CA

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from a sentence for one count of aggravated robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1999), in the Third Judicial District Court, Salt Lake County, the Honorable Ann M. Boyden presiding.¹ This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(j) (2002).

ISSUE PRESENTED ON APPEAL AND STANDARD OF REVIEW

Issue. Where defendant plea-bargained 42 first degree felony charges down to three—one from each criminal episode—did the trial court abuse its discretion by running defendant’s sentence in this case consecutively to his sentences in the other two cases?

Standard of Review. Because trial courts are vested with “wide latitude and discretion in sentencing,” *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997), this Court will “review

¹ Defendant purports to appeal from three separate judgments. However, no notice of appeal was filed in the other two cases. See pp. 14-17 herein.

a trial court's imposition of consecutive sentences for an abuse of discretion.” *State v. Fedorowicz*, 2002 UT 67, ¶ 63, 52 P.3d 1194 (citations omitted).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Resolution of this case requires application of the following statutory provision:

Utah Code Ann. § 76-3-401(2) (Supp. 2002).

In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.

STATEMENT OF THE CASE

Based on three separate criminal episodes, defendant was charged in juvenile court, which bound him over to answer as an adult in district court. R. 14. In district court, defendant was charged in three separate cases numbered 011913948, 011913950, and 011913951. In the instant case (011913948), defendant was charged with nine first degree felonies and one second degree felony:

Four counts of aggravated robbery, a first degree felony, Utah Code Ann. § 76-6-302 (1999);

Four counts of aggravated kidnapping, a first degree felony with a mandatory minimum sentence of 6, 10, or 15 years to life, Utah Code Ann. § 76-5-302 (1999 and Supp. 2002);

One count of aggravated burglary, a first degree felony, Utah Code Ann. § 76-6-203 (1999); and

One count of tampering with a witness, a second degree felony, Utah Code Ann. § 76-8-508 (Supp. 2000).

R. 6-12. All counts carried both weapons and in-concert (“gang”) enhancements. *Id.*

Including the other two cases, defendant was charged with a total of 42 first degree felonies and three second degree felonies:

19 counts of aggravated robbery, a first degree felony, Utah Code Ann. § 76-6-302 (1999);

20 counts of aggravated kidnapping, a first degree felony with a mandatory minimum sentence of 6, 10, or 15 years to life, Utah Code Ann. § 76-5-302 (1999 and Supp. 2002);

Three counts of aggravated burglary, a first degree felony, Utah Code Ann. § 76-6-203 (1999); and

Three counts of tampering with a witness, a second degree felony, Utah Code Ann. § 76-8-508 (Supp. 2000).

R. 6-12, 15, 127: 2-3. Again, all charges carried “gang” and weapons enhancements. R. 6-12, 15, 127:2-3. The juvenile court bound defendant over to district court. R. 14.

Based on a joint plea bargain, and in a joint change of plea hearing, defendant pled guilty to three aggravated robberies, one from each of the three prosecutions, and the remaining 42 counts were dismissed on the State’s motion. R. 118: 13-15. Defendant moved to withdraw his guilty plea, but withdrew the motion when the State dropped the gang and weapons enhancements. R. 119: 5, 10.

After ordering a 60-day diagnostic examination, the court held a single sentencing hearing for all three cases. R. 92-93, 101, 120 (addendum A). The prosecutor reported that defendant’s victims did not attend the hearing “for fear of retaliation” from members of defendant’s gang. R. 120: 11.

In the instant case (011913948), defendant was sentenced to the statutory term of five years to life, “prison sentence to run consecutively with 011913950 & 011913951.” R. 101-02 (capitalization omitted) (addendum B).

Defendant timely appealed in the instant case (011913948). R. 103 (addendum C). He did not appeal in the other two cases. *See* Dockets of Cases No. 011913950 & 011913951 (addendum D). The Utah Supreme Court transferred this case to the Utah Court of Appeals on 4 November 2002. R. 113.

STATEMENT OF THE FACTS²

The crimes

First incident. On 24 April 2001, the 12 members of a household on West Fremont Avenue in Salt Lake City returned home from playing soccer at the park. R. 127: 5. When two of the occupants answered a knock at the door, they were confronted by four male Hispanics, all holding guns, who ordered them to turn around. *Id.*

The intruders tied the hands of all the adult male victims behind their backs with speaker wire and a necktie and ordered them to lie on the floor. *Id.* Women and children were taken downstairs. *Id.* The assailants told the women that if they did not comply, they would take their children. *Id.*

The robbers stole \$5,500 cash, a video camcorder, and a cell phone. *Id.* The large amount of cash was in the home because one of the home’s occupants sold clothing at the Redwood Road swap meet, a fact of which the intruders were apparently aware. R. 127: 5-6.

² The statement of facts is taken from the Pre-sentence Report and Diagnostic Report prepared by Adult Probation and Parole.

Defendant admitted to police that he had participated in this crime. R. 127: 6. He had a revolver and brought the female victims from the basement to the main floor of the residence at gunpoint. *Id.* His share of the money was approximately \$700-\$800. *Id.* Defendant reported that he and his cohorts chose this residence because they mistakenly believed it was a drug house. *Id.* He refused to identify his co-perpetrators. *Id.*

Second incident. On 9 May 2001, Valeriano and Leopoldo Gallardo, father and son, were sitting in the family room of their home in Salt Lake City when they heard a knock at the door. *Id.* When Leopoldo answered the door, intruders grabbed him and led him back to the family room with a gun to his head. *Id.* When Leopoldo's brother Armando came downstairs to see what the yelling was about, someone grabbed him and took him to the family room, where he saw Leopoldo lying face down on the floor with one of the intruders pointing a .22 caliber pistol at his head. *Id.* The assailants placed Armando face down on the floor and tied his hands with the cord of an iron. *Id.* Valeriano had been placed on the couch and told to look at the floor. R. 127: 7. The assailants demanded drugs, jewelry, guns, and money. R. 127: 6. Defendant stood guard in the family room. R. 127: 7.

The intruders cut all the telephone cords in the house and began to kick Armando and Leopoldo in the back and head. *Id.* One stabbed Leopoldo with a small steak knife. *Id.* After about 20 to 25 minutes the robbers left with \$420 cash, a VCR, a Nintendo, and \$1,000 worth of jewelry. *Id.*

Later, Armando was hesitant to identify anyone because the intruders had threatened to kill his family if he called police. *Id.* He remembered defendant because he seemed

concerned when Armando's father, Valeriano, was having heart problems during the robbery.

Id. Also, Armando and Leopoldo both identified one of defendant's cohorts as the most aggressive, and the one who made the most threats and stabbed Leopoldo. R. 127: 7-8.

Defendant admitted participating in this incident with his friends. R. 127: 8.

Third incident. On 15 May 2001, 14-year-old Erika Plancarte heard a knock on her front door. R. 127: 3-5. She asked, "Who is it?" A voice answered, "Is your dad home?" R. 127: 3. The door was locked. R. 127: 4. She told the person outside to "hold on," but someone outside opened the door with a knife and four Hispanic males clad in "gang-like attire" walked in. R. 127: 3-4. When Erika screamed, they pushed her up against the wall and told her to "shut up." R. 127: 4. One of the intruders had a handgun. *Id.*

The intruders then used speaker wire from the home to tie up Erika's parents. *Id.* Her little brother, Raul, age 11, was also brought into the living room. *Id.* The assailants asked Erika and her family for "'gold and money' while pointing a gun to their heads." *Id.*

When Erika's mother began having an asthma attack, the intruders let Erika retrieve her mother's inhaler from upstairs. *Id.* They took \$200 cash, credit cards, computer games, jewelry, CD's, two cameras, a camcorder, and a VCR. *Id.*

When confronted by police about this incident, defendant first denied, then admitted, his participation. *Id.* He told detectives "the police department should thank him for hitting the homes of drug dealers." *Id.* He admitted he had a gun similar to the one used in the robbery. R. 127: 5.

Defendant told police, “I feel bad, I don’t want to go to prison.” R. 127: 8. However, he refused to divulge the identity of his co-perpetrators, except to say they were all members of the California Latin King gang. R. 127: 4-5. Defendant’s gang sobriquet is “Smiley.” R. 127: 6.

Defendant turned 18 eight days after the last robbery. R. 127: 1.

Pre-Sentence Report

Defendant was born in Los Angeles and raised in California, Mexico, and Utah. R. 127: 15. He was raised in a single family home by his mother and sister until his mother remarried. *Id.* He reported no problems with family members, no health issues, and no history of physical or sexual abuse. R. 127: 15, 17. At age 15 he joined the California Latin King/Surreños 13, after which he stopped attending school and started getting into trouble with the law, although his only prior offenses were for school trespass and curfew. R. 127: 13, 15.

One of the officers who questioned defendant about the instant crimes felt that defendant took “a lot of pride” in having committed the crimes and viewed himself as a “tough gang guy.” R. 127: 12-13. For example, he said the police should be “happy” he committed the offense, since his victims were drug dealers. R. 127: 12. In fact, the victims were not drug dealers and the defendants’ actions “have emotionally scarred their lives.” *Id.* The two children involved in one of the offenses “will never be the same.” 127:13.

The Pre-Sentence Report (PSR) concluded that defendant “appears to be entrenched into the gang world as witnessed by his continued criminal actions after the initial robbery

and his uncooperative nature during the investigation by refusing to assist law enforcement officers with the names of the co-defendants.” R. 127: 19. The PSR recommended that defendant receive consecutive statutory sentences. R. 127: 21.

Diagnostic Evaluation Report

The Diagnostic Evaluation Report (DER) reported that defendant obtained an IQ equivalent of 67, placing him in the extremely low to borderline range of intellectual ability. R. 128, DER at 2. The evaluation concluded that although defendant “may have some academic deficits, it is believed part of his low scores and his failure to complete assignments can be attributed to his not fully applying himself.” *Id.*

Although defendant participated in a Criminal Thinking Errors Assessment Group at the prison, he “attempted to avoid interaction with the group by claiming he couldn’t understand the questions asked.” *Id.* The little information he did provide suggested he committed the robberies “because he didn’t want to look ‘weak’ to other gang members and because he wanted money.” *Id.* Although originally scared to rob anyone, defendant found it easier after the first robbery “because he felt a ‘rush’ from entering the victims’ homes.” *Id.*

While expressing a desire to leave his gang, defendant continued to associate with two of his co-defendants who were also undergoing diagnostic evaluations. R. 128, DER at 3. The Diagnostic Evaluation concludes that because defendant “is unwilling to take a self-critical view of himself, and because he has already demonstrated a willingness to participate

in criminal and gang activity, it is highly probable he will continue to do so when left to his own accord.” *Id.*

When asked in a group setting how he felt after the robbery, defendant responded, “I don’t know, after the robbery I just felt good to have the money.” R. 128, Diagnostic Group Report (DGR) at 2. He did not complete the required group homework and did not participate in the group when called on, claiming he could not understand the questions asked. *Id.* He was not willing to identify his own thinking errors. *Id.*

Evaluators identified three of his “criminal thinking errors”:

Power thrust, or the desire to “control, intimidate, attack, or manipulate other people in order to gain a feeling of power or being in control”;

Failure to Consider Injury to Others, or the failure to recognize the impact of his action on others; and

Criminal Pride, meaning that unlike most people who feel ashamed of a criminal act, defendant takes pride in his antisocial conduct. R. 128, DER at 3.

The Diagnostic Evaluation also states that defendant appears to be “still deeply entrenched in the gang mentality. It appears he is more concerned about maintaining his image with his friends, than he is at respecting the rights, feelings, and belongings of others.” *Id.*

Defendant also underwent a psychological evaluation. R. 128, Psychological Evaluation. That evaluation reported that defendant does not suffer from any severe major mental illness. R. 128, Psychological Evaluation at 5. It also concluded that defendant

likely “did not comprehend the full impact of the home invasion burglaries . . . as he was told by his friend they were going to rob drug dealers of their money.” *Id.* Although defendant probably did believe “he was doing a noble thing by stealing from drug dealers,” nevertheless he “knew he was engaging in a criminal act and should be held culpable for his behavior.” *Id.*

The Diagnostic Unit staffing committee found “the very nature of the present offenses alarming.” R. 128, DER at 5. They concluded that defendant “poses a significant risk to society” and so recommended that he “be committed forthwith to the Utah State Prison.” *Id.* Their alternative recommendation was for one year in the county jail and release upon certain stated conditions. *Id.*

Sentencing

At sentencing, defense counsel began by stressing three factors: defendant’s age (18), defendant’s “extremely low to borderline range of intellectual ability,” and his limited juvenile record. R. 120: 4-5. He also noted that defendant had been employed, that he had only a limited history of substance abuse, and that he had a supportive and law-abiding family. R. 120: 4-7. Counsel urged the court to follow the alternative recommendation in the Diagnostic Evaluation. R. 120: 7-8.

The prosecutor stressed defendant’s “heinous” crimes and the fact that despite his low IQ defendant “knew what he was doing all along when he committed these crimes.” R. 120: 9. He also noted defendant’s “entire commitment to his gang friends” as reflected in the

Diagnostic Evaluation and Psychological Evaluation. R. 120: 10. He urged the court to impose consecutive sentences. R. 120: 11-12.

In rebuttal, defense counsel acknowledged that “these are heinous crimes,” but noted that defendant was the one who helped the victims who needed medication during the robberies. R. 120: 12-13. He also described defendant as “a lamb that can be led anywhere.” R. 120: 13.

Defendant made a statement at allocution: “I want to change. I’m changing. I want another chance. I can serve another year. I regret what I did. I wanted to ask forgiveness to the Court for what I did.” R. 120: 14.

The trial judge thanked counsel for the work and thought they had put into the sentencing. R. 120: 14. She continued: “But with all due respect, I don’t think any of them put [in] any more than I have [had] to put in[,] because I’m the one that’s ultimately got to determine what the fair and just sentence is.” *Id.* She stated that she had “quite frankly, agonized over it for quite some time because I take very seriously my responsibility to do justice for you as a defendant before me for sentencing and also my responsibility to this community.” R. 120: 15.³

The judge considered the “egregious” and “violent” character of defendant’s crimes: “this is a very, very egregious crime—people were traumatized, people were—little children

³ Defendant summarizes these statements of the judge as follows: “The trial judge stated that she had spent an inordinate amount of time reviewing the sentencing factors in this case.” Br. Aplt. at 10. Contrary to the implication of this summary, the judge never complained or implied that she had been required to devote more time to this sentencing than it deserved.

sat and watched their parents be traumatized.” *Id.* She also commented on defendant’s “merciful” actions toward a victim, his low IQ, his willingness to be manipulated, his unwillingness to break gang ties, the fact that he remained a danger to the community, and the Diagnostic Evaluation’s conclusion that he was a poor candidate for probation and treatment. R. 120: 15-17.

Finding no basis for making the terms concurrent, the court ran the three terms consecutively. R. 120: 17-18.⁴ She commented that this was the harshest sentence she could impose, “but it is the only just one given the negotiations that have happened to this point . . .” R. 120: 18.

At that point defense counsel conceded that the court’s “assessment is fair,” but added that “this is an 18-year-old boy. I don’t know what 15 years looks like on a consecutive sentence under the Guidelines. I don’t think it is, in fact, 15 years.” *Id.*⁵

SUMMARY OF ARGUMENT

Defendant participated in three separate criminal episodes. In three separate cases, he was charged with—and confessed to—a total of 42 first degree and three second degree felonies, all carrying gang and weapons enhancements. He plea bargained these down to three unenhanced first degree felonies, one in each case. This plea bargain was generous.

⁴ It imposed no fine. R. 120: 18.

⁵ Defense counsel was correct. Under the Utah Sentencing Guidelines, the recommended length of stay on these first degree sentences, run consecutively, is 10 years, nine months. *See* page 17, footnote 6.

A. Defendant filed a notice of appeal in the instant case, but not in the other two. Therefore his five-to-life sentences in those cases, which also run consecutively, are not at issue on this appeal. At issue here is whether the court abused its discretion in running defendant's five-to-life sentence in the instant case consecutively with his sentences in the other two. Under the Utah Sentencing Guidelines, running it consecutively rather than concurrently will increase his recommended length of stay about 22 months.

B. Defendant argues that the trial court abused its discretion in not sentencing him to jail time and probation. However, probation is not an option where defendant is already incarcerated pursuant to his sentences in the other two cases.

C. The trial court did not abuse its discretion in running defendant's instant sentence consecutively to his terms in the other two cases. The court carefully reviewed the Pre-sentence Investigative Report and the 60-day Diagnostic Evaluation Report and considered the relevant statutory factors. It considered the nature and circumstances of defendant's crimes, which were violent and egregious. It considered the number of victims, which was 20. And it considered the history, character, and rehabilitative needs of the defendant. At sentencing, defense counsel stressed defendant's age (18) and his supportive family. However, in the AP&P evaluations, defendant showed himself to be manipulable, remorseless, non-self-critical, unconcerned with others' rights, deeply entrenched in the gang mentality, and likely to continue his gang activity—in short, a significant risk to society.

Based on this information, the court acted with perfect reason in running defendant's sentence in this case consecutive to his sentences in the two related cases.

ARGUMENT

WHERE DEFENDANT PLEA-BARGAINED 42 FIRST DEGREE FELONY CHARGES DOWN TO THREE—ONE FROM EACH CRIMINAL EPISODE—THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THIS CASE BY RUNNING DEFENDANT’S SENTENCE CONSECUTIVELY TO HIS SENTENCES IN THE OTHER TWO CASES

Defendant claims that, in imposing three consecutive sentences, the trial court abused its discretion by placing undue weight on the seriousness of the offenses and by “failing to consider relevant mitigating circumstances.” Br. of Aplt. at 13.

Plea bargain. Defendant was charged with 42 first degree felonies, each of which carried both weapons and in-concert (“gang”) enhancements. R. 6-122, 15, 127: 2-3. The gang enhancements raised the potential sentence on each of these counts to nine years to life, Utah Code Ann. § 76-3-203.1(3)(e) (Supp. 2001); the weapons enhancement added at least one additional year. Utah Code Ann. § 76-3-203(2)(a) (Supp. 2001). Thus, each of these 42 first degree felony counts carried a potential sentence of at least 10 years to life—420 years total.

In addition, defendant was charged with three second degree felonies, each of which carried both weapons and gang enhancements. R. 6-12. The gang enhancements raised each of these second degree felonies to first degree felonies carrying a sentence of five years to life, and the weapons enhancements added at least one additional year. Utah Code Ann. §§ 76-3-203(2)(a), -203.1(3)(d) (Supp. 2001). Thus, each of these three second degree felony counts carried a potential sentence of six years to life—18 years total.

In the plea bargain, the State agreed to dismiss 39 of the 42 first degree felonies, all three second degree felonies, and all weapons and gang enhancements, leaving defendant facing three first degree felonies (one in each case), each carrying a potential sentence of five years to life. R. 118: 13-15; 119: 5, 10; Utah Code Ann. § 76-3-203(2)(a) (Supp. 2001).

Considering defendant confessed to committing all three crimes in concert with other gang members and using a weapon, and that he had no apparent mental defenses, this plea bargain was generous.

A. The consecutive sentences imposed in cases 011913950 and 011913951 are not at issue on this appeal.

Defendant purports to challenge all three sentences in this single appeal: “This is an appeal from a judgment of conviction for three counts of aggravated robbery . . .” Br. Aplt. at 1. In fact, there is no “judgment of conviction for three counts of aggravated robbery.” There are *three* judgments of conviction, each for *one* count of aggravated robbery. *See* R. 101-02, Dockets of Case Nos. 011913950 & 011913951 (addendum D).

This fact is apparent on the face of the “Sentence, Judgment, Commitment” in case no. 011913948, the only judgment appearing in the record on appeal. *See* R. 101-02. That document identifies a single charge and a single sentence “of not less than five years and which may be life,” which sentence is ordered “to run consecutively with 011913950 & 011913951.” *Id.* (capitalization omitted, spelling corrected).

Defendant filed a notice of appeal in case 011913948. *See* R. 103 (addendum C). In compliance with rule 3(d), Utah Rules of Appellate Procedure, defendant’s notice of appeal “designate[s] the judgment . . . appealed from”: it bears case no. 011913948 and states that

defendant appeals “from the judgement and commitment entered against him in the above-entitled matter . . .” *Id.* It refers to no other judgments or case numbers, nor did defendant file a notice of appeal in cases 011913950 or 011913951. *See id.*; Dockets of Cases No. 011913950 & 011913951 (addendum D).

Because an appellant may not appeal from one judgment and then on appeal challenge two others from which he did not appeal, only the sentence imposed in case no. 011913948 is at issue here. Defendant cannot challenge the two consecutive sentences imposed in cases no. 011913950 and 011913951. Accordingly, the issue on appeal is not whether the trial court abused its discretion in imposing three consecutive sentences, as defendant suggests. Br. Aplt. at 1-2. Rather, it is whether, having imposed two other consecutive sentences, the trial court abused its discretion in imposing a third to run consecutively to those two.

The Utah Sentencing Guidelines project the time an inmate is likely to serve based on numerous factors, including whether his terms run concurrently or consecutively. The difference in the recommended length of stay between running defendant’s third sentence

concurrently and running it consecutively is about 22 months.⁶ Accordingly, nothing more is at stake on this appeal than these 22 months.

B. Probation is not an option where defendant is sentenced to prison terms in cases no. 011913950 and 011913951.

Defendant first complains that the court abused its discretion in denying him probation. Br. Aplt. at 13-14. He argues that “[d]espite the evidence supporting probation, the trial judge focused on the seriousness of the offenses and flatly ruled out a jail term and probation.” Br. Aplt. at 14. He argues further that “[p]robation was a legitimate sentencing option when properly weighing these mitigating circumstances.” *Id.*

⁶ AP&P scored each of defendant’s three felonies a CI, meaning that the full recommended length of stay for each of the three convictions is six years (72 months). R. 127: 22.

If an additional conviction is ordered to run consecutively, the Guidelines “add 40% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence.” Utah Sentencing Guidelines at 10.

Thus, defendant’s recommended length of stay based only on his first sentence is 72 months. His second consecutive sentence adds 29 months (40% of 72 mos. = 28.8 mos.). His total recommended length of stay in cases no. 011913950 and 011913951 is thus 8 years and 5 months (72 mos. + 29 mos. = 101 mos. = 8 years + 5 months).

Since defendant’s sentence in the instant case was run consecutively, it adds to his recommended length of stay an additional 29 months (40% of 72 mos. = 28.8 mos.). Accordingly, his total recommended length of stay under his current sentence is 10 years, 9 months.

For an additional conviction ordered to run concurrently, the Utah Sentencing Guidelines “add 10% of the recommended length of stay of the shorter sentence to the full recommended length of the longer sentence.” Guidelines at 10.

Thus, if defendant’s sentence in the instant case had been run concurrently, it would have added an additional 7 months (10% of 72 mos. = 7.2 mos.), for a total recommended length of stay of 9 years (101 mos. + 7 mos. = 108 mos. = 9 yrs.)

Thus, under the Guidelines, the difference in defendant’s recommended length of stay between running the instant sentence consecutively and running it concurrently is about 22 months (10 yrs. 9 mos. - 9 yrs. = 1 yr. 9 mos. = 22 mos.).

The Utah Sentencing Guidelines may be viewed at <http://sentencing.utah.gov/Guidelines/Adult/default.htm> (visited 6 May 2003).

This argument presupposes that all three sentences are still in play. As explained above, his sentences in the other two cases are not. Since an inmate incarcerated at the Utah State Prison cannot be simultaneously placed on probation, this relief is unavailable to him.

Moreover, as explained below, the court did not abuse its discretion in running defendant's term in case no. 011913948 consecutively to his terms in cases no. 011913950 and 011913951. Consequently, it *a fortiori* did not abuse its discretion in denying probation.

C. The trial court did not abuse its discretion in running defendant's term in the instant case consecutively to his terms in cases no. 011913950 and 011913951.

Standard of review. The imposition of a sentence “rests entirely within the discretion of the [trial] court, within the limits prescribed by law.” *State v. Peterson*, 681 P.2d 1210, 1219 (Utah 1984) (citations and internal quotation marks omitted). Because trial courts are vested with “wide latitude and discretion in sentencing,” *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997), this Court will “review a trial court’s imposition of consecutive sentences for an abuse of discretion.” *State v. Fedorowicz*, 2002 UT 67, ¶ 63, 52 P.3d 1194, 1209 (citations omitted). “An abuse of discretion results when the judge ‘fails to consider all legally relevant factors’ or if the sentence imposed is ‘clearly excessive.’” *State v. McCovey*, 803 P.2d 1234, 1235 (Utah 1990) (citations omitted).

The reviewing court may find an abuse of discretion only if it concludes that “no reasonable [person] would take the view adopted by the trial court.” *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978).

Sentencing considerations. Utah Code Ann. § 76-3-401 (Supp. 2002) controls the imposition of consecutive sentences. Subsection (2) provides: “In determining whether state

offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.”

Utah appellate courts have held that when evidence of those factors appears on the record, a reviewing court will assume that the trial court considered them. *See State v. Helms*, 2002 UT 12, ¶ 11, 40 P.3d 626 (“[W]e will not assume that the trial court’s silence, by itself, presupposes that the court did not consider the proper [sentencing] factors as required by law.”); *State v. Beck*, 584 P.2d 870, 872 (Utah 1978) (stating it must be presumed that court used a court-ordered report as statute contemplated); *State v. Schweitzer*, 943 P.2d 649, 652 (Utah Ct.App.1997) (holding that defendant did not “show that the trial court failed to consider [consecutive sentence] factors ... [when] mitigating evidence was presented to the trial court through defendant’s testimony; his counsel’s arguments; letters from the [victims], defendant’s therapist, and defendant’s attorney; and the Pre-sentence Investigation Report”).

The trial court did not abuse its discretion here. It considered “the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.” Utah Code Ann. § 76-3-401(2) (Supp. 2002). The court recognized its duty, noting, “I have to look at all of the factors, and I have done that.” R. 120: 15. Defendant acknowledges that the judge “was aware of the factors to consider in deciding whether a sentence should run concurrently or consecutively,” but argues that “she did not adequately weigh those factors.” Br. Aplt. at 20.

The trial court's weighing was more than adequate. It reviewed the recommendations of AP&P at length, entertained extensive argument of counsel, and heard defendant's allocution. *See* R. 120. Having done so, the court reasonably and correctly determined that concurrent sentences were not appropriate.

1. The court considered “the gravity and circumstances of the offenses.”

The court considered the first statutory factor, “the gravity and circumstances of the offenses.” § 76-3-401(2). It stressed that “this is a very, very egregious crime—people were traumatized, people were—little children sat and watched their parents be traumatized.” R. 120:15. The court continued, “This is a serious home invasion series, series of home-invasion robberies—more than one, more than two, there were several counts. And I need to take the very, very egregious, violent nature of these offenses into my consideration at sentencing.” *Id.*

Indeed, defendant complains that “the trial judge focused mainly on the seriousness of the offenses in imposing consecutive prison terms.” Br. Aplt. at 16. Assuming *arguendo* this assertion is true, it does not identify an abuse of discretion. “The overriding consideration is that the sentence be just. One factor in mitigation or aggravation may weigh more than several factors on the opposite scale.” *State v. Russell*, 791 P.2d 188, 192 (Utah 1990).

Defendant argues that the trial court “zeroed in on Mr. Valdovinos’ ‘egregious’ conduct and then doomed Mr. Valdovinos to extended incarceration where he has no obligation to seek any treatment, at all, in prison.” Br. Aplt. at 18. This statement seems to ignore defendant’s culpability. He doomed himself by committing 42 first degree felonies, each

carrying a potential sentence of 10 years to life with the weapons and gang enhancements. R. 6-12, 15; 127: 2-3. Had he been sentenced for every crime he confessed to, even run concurrently, he would have spent at least 30 years in prison. This would have been extended—though not necessarily excessive—incarceration.

2. The court considered “the number of victims.”

The court considered the second statutory factor, “the number of the victims.” § 76-3-401(2). Although the judge never identified the total number of defendant’s victims (20), she did note that “[t]here were several different robberies, several different victims.” R. 120: 17. She continued: “Even when—even if your perception was that you were going in and doing this to drug dealers because it was what they deserved, the fact that you hit the wrong home and the fact that it happened again and again and again is concerning to me.” *Id.*

Having read the Pre-sentence Investigative Report, the court was aware that defendant and his co-perpetrators engaged in three separate criminal episodes with three separate sets of victims, for which defendant was charged with 42 first and three second degree felonies, all with both weapons and gang enhancements. *See* R. 128: 18 (referring to “the negotiations that have happened to this point”).

The trial court was fully entitled to consider reliable evidence of dismissed counts. *See State v. Howell*, 707 P.2d 115, 118 (Utah 1985) (“A number of courts have allowed consideration of facts relating to dismissed charges where the facts overlapped and had an ‘obvious and direct relevance to the crime to which the defendant pled guilty.’”) (quoting *State v. Marzolf*, 79 N.J. 167, 398 A.2d 849, 850 (1979)); *State v. Lipsky*, 639 P.2d 174, 176

(Utah 1981) (“the sentencing judge may rely upon information as to crimes with which the defendant has been charged but not tried”) (quoting *United States v. Sweig*, 454 F.2d 181, 184 (2nd Cir. 1972)); see also *State v. Mills Johnson*, 856 P.2d 1064, 1071-72 (Utah 1993) (sentencing court may not rely on “inherently unreliable evidence”).

3. The court considered “the history, character, and rehabilitative needs of the defendant.”

The court considered at length the third statutory factor, “the history, character, and rehabilitative needs of the defendant.” § 76-3-401(2). The court ordered both a Pre-sentence Investigative Report and a 60-day Diagnostic Report, reviewed the information, and in fact “agonized over it for quite some time.” R. 120: 15. Having done so, the court was aware that defendant expressed little or no remorse. R. 128, DGR at 2. He participated in the diagnostic evaluation reluctantly and incompletely. R. 128, DGR at 2. He was not willing to identify his own thinking errors, which are grave. R. 128, DGR at 2-3. He remains “deeply entrenched in the gang mentality. It appears he is more concerned about maintaining his image with his friends, than he is [about] respecting the rights, feelings, and belongings of others.” R. 128, DER 3. Defendant admitted that he committed those crimes “because he didn’t want to look ‘weak’ to other gang members and because he wanted money.” R. 128, DER 2. In short, defendant “poses a significant risk to society.” R. 128, Diagnostic Evaluation at 5.

On appeal, defendant stresses his “rehabilitative needs,” Br. Aplt. at 18-19. However, the State is not prohibited from incarcerating an offender “for purposes other than rehabilitation.” *State v. Bishop*, 717 P.2d 261, 268 (Utah 1986). The law does not, and

should not, require a sentencing court to subordinate the safety of the community to defendant's claimed rehabilitative needs.

Defendant complains that AP&P "failed to acknowledge Mr. Valdovinos' supportive family as a mitigating factor." Br. Aplt. at 16. However, the trial court specifically took this factor into account, while recognizing the limited influence defendant's family had previously exerted over him: "It's also clear from all of this presentence information and the diagnostic that you are still a very real danger to the community, that you still continue to follow along the gang member paths rather than the supportive family path that Mr. Archuleta has argued to me." R. 120: 16.

Defendant complains that "APP also failed to appreciate Mr. Valdovinos' lesser role in the crimes." Br. Aplt. at 16. Again, the trial court addressed it, but found it unpersuasive: "You have shown that you chose to follow by being manipulated, perhaps, but you still were able to be manipulated by them and did follow after gang friends rather than follow in what you had clearly been trained to do by your supportive, law-abiding family." R. 120: 16.

Defendant complains that "[a]lthough the trial court noted that Mr. Valdovinos assisted one victim in obtaining medication, she placed little value on this act. R. 120: 12." Br. Aplt. at 17. The court specifically considered this factor, but in context: "And while there may be some mitigation that you went up and got medication for someone because you were being merciful to them, there was no reason that they ever needed to be in that position." *Id.*⁷

⁷ Although defendant claims credit for having allowed Erika Plancarte to retrieve her mother's asthma medication, Br. Aplt. at 5, 16, 17, the record does not support this claim. Erika stated that "the suspects" let her go upstairs and get the medication. R. 127: 4. Defendant himself merely "remembered the mother had a 'medical problem.'" R. 127: 5.

Defendant complains that if he “receives no treatment to improve his poor intellectual functioning, he will never be in a position to receive the very treatment he needs to adhere to society’s norms.” Br. Aplt. at 19. This assertion falsely assumes that defendant will receive no treatment in prison and that he would in any event respond positively to treatment. As the court noted, the diagnostic evaluation concludes that defendant is a poor candidate for treatment: “The 60-day diagnostic evaluation was precisely so that I could get an idea if you were conducive to probation and if treatment was something that would help, and it is clear from the results that it is not.” R. 120: 16. This reasoning does not “fault Mr. Valdovinos for lacking intelligence,” as defendant contends. Br. Aplt. at 18. On the contrary, to grant leniency based on a defendant’s purported need for treatment to which he is not amenable would be irrational.

Moreover, the trial court correctly stressed that defendant was not “willing to let go of your friendship and association with the gangs . . . There’s just no indication that you are really willing to do what you need to do.” R. 120: 17.

Defendant argues that his “poor intellectual functioning further supported probation.” Br. Aplt. at 17. The trial court expressly considered this factor: “I’ve also taken into consideration your disabilities, Mr. Valdovinos. I realize that you are dealing with a low IQ. And I know what that means, and I know what I can expect and what I can’t expect.” R. 120: 15. The court recognized that “it is an explanation to a certain extent for some of what I have read in all of this information, but it does not entirely excuse everything.” R. 120: 15-16.

Defendant contends that the “trial judge below similarly omitted Mr. Valdovinos’ age in determining her sentencing calculus.” Br. Aplt. at 16. On the contrary, she was aware of defendant’s age, as defense counsel referred to his client’s age repeatedly. R. 120: 4, 13, 18. Obviously, “being aware of his age and taking it into account are not the same thing.” *State v. Strunk*, 846 P.2d 1297, 1300 (Utah 1993) (remanding the case for resentencing where trial court did not consider defendant’s age as mitigating factor despite counsel’s reference to age at sentencing). Nevertheless, absent circumstances inapplicable here, an appellate court “will not assume that the trial court’s silence, by itself, presupposes that the court did not consider the proper factors as required by law.” *Helms*, 2002 UT 12, ¶ 11, 40 P.3d 626. “To do so would trample on the deference [the reviewing] court usually gives to the sentencing decisions of a trial court.” *Id.*

In any event, the sentencing judge expressly considered the fact that defendant’s mental functioning was at the level of a small child: “I’ve also taken into consideration your disabilities, Mr. Valdovinos. I realize that you are dealing with a low IQ. And I know what that means . . .” R. 120: 15. What defendant’s low IQ meant, as the judge read in the Diagnostic Evaluation Report, was that defendant “reads at a third grade level, spells at a second grade level, and performs arithmetic at a fifth grade level.” R. 128, DER at 2.

Strunk is not “nearly identical” to the case at bar, as defendant contends. Br. Aplt. at 22. Strunk pled guilty to first degree murder, child kidnapping, and aggravated sexual abuse of a child. *Strunk*, 846 P.2d at 1299. He was 16 years old at the time of the offense. *Id.* After pleading guilty as charged, Strunk received a life sentence on the first degree murder,

and consecutive minimum mandatory sentences of 15 years to life for the child kidnaping and nine years to life for the aggravated sexual assault of a child. *Id.* at 1299, 1301.

The supreme court remanded the case because “the trial court abused its discretion in failing to sufficiently consider defendant’s rehabilitative needs in light of his extreme youth and the absence of prior violent crimes.” *Id.* at 1302. “By ordering Strunk’s minimum sentences . . . to run consecutive to each other, the trial court assured that Strunk would spend a minimum of twenty-four years in prison before being eligible for parole.” *Id.* at 1301. The Court noted, “While imprisonment for that period of time, or even longer, may prove to be necessary and appropriate, the twenty-four-year term robs the Board of Pardons of any flexibility to parole Strunk sooner.” *Id.* Accordingly, the court directed that “if on remand the trial court again imposes the longest minimum mandatory terms for these two offenses, all three terms should be ordered to run concurrently to afford the Board of Pardons the flexibility to adjust Strunk’s prison stay to match his progress in rehabilitation and preparation to return to society.” *Id.* at 1302.

This is not *Strunk*. Strunk was 16 at the time of his crimes; defendant was nearly 18. Strunk had a single victim; defendant had 20. Strunk pled guilty as charged; defendant plea-bargained away 39 first degree felony counts, three second degree felony counts, 45 weapons enhancements, and 45 gang enhancements. Strunk faced—in addition to his life sentence—24 years in prison (one 15-year minimum mandatory term and one nine-year minimum mandatory term run consecutively); defendant faces a total projected term of 130 months (compared to 108 months if run concurrently). *See* Utah Sentencing Guidelines at

10 (viewable at <http://sentencing.utah.gov/Guidelines/Adult/default.htm>). Running Strunk's terms consecutively made an actual difference of nine years; running defendant's consecutively makes an actual difference of about 22 months.

Although the sentencing judge here commented at length at sentencing, demonstrating her grasp of the relevant sentences factors, a sentence will be upheld even where the judge's record remarks are cursory.

The recent Utah Supreme Court case of *State v. Helms* demonstrates this. Helms pled guilty to two counts of attempted aggravated sexual abuse of a child and two counts of dealing in harmful material. *Helms*, 2002 UT 12, ¶ 1. On appeal, Helms contended that the trial court abused its discretion by imposing consecutive sentences without considering all of the statutory factors relevant to that decision. 2002 UT 12, ¶ 7. Before imposing sentence, the trial court remarked:

Well, the court has gone over this presentence report rather carefully, and read it, and what has taken place. I just read a letter from your sister also. And, of course, the court is realistic of this sort of thing. This cannot be tolerated as far as society's concerned. The action is just completely outside the realm of a normal situation.

2002 UT 12, ¶ 6.

On appeal, Helms argued, as defendant does here, that "the trial court abused its discretion by considering only the 'gravity and circumstances' of the offense and by failing to consider his history." 2002 UT 12, ¶ 9. He encouraged the supreme court "to assume that the trial court did not consider the factors at all, simply because it did not address each of the factors on the record." 2002 UT 12, ¶ 10. The court rejected Helms's claim, relying on the

brief statement of the trial court quoted above. 2002 UT 12, ¶ 13. The court noted that the trial court had carefully reviewed the PSR, which contained abundant information about defendant's history, character, and rehabilitative needs. *Id.*

Like defendant here, Helms went “to great lengths to point out indicia that tend to suggest a sentencing outcome more to his favor,” claiming that the trial court had “overlooked his ‘acceptance of responsibility, remorse, cooperation with law enforcement, positive efforts in jail, and the significant steps he has taken toward rehabilitation.’” 2002 UT 12, ¶ 14.

“In making this assertion,” the supreme court noted, “Helms implies that the trial court could not have considered all the factors and then ordered as it did. However, the fact that Helms views his situation differently than did the trial court does not prove that the trial court neglected to consider the factors listed in section 76-3-401(4).” *Id.* On the contrary, it continued, “we have recognized that sentencing reflects the personal judgment of the court, and consequently, a sentence imposed by the trial court should be overturned only when it is inherently unfair or clearly excessive.” *Id.* (citing *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997)).

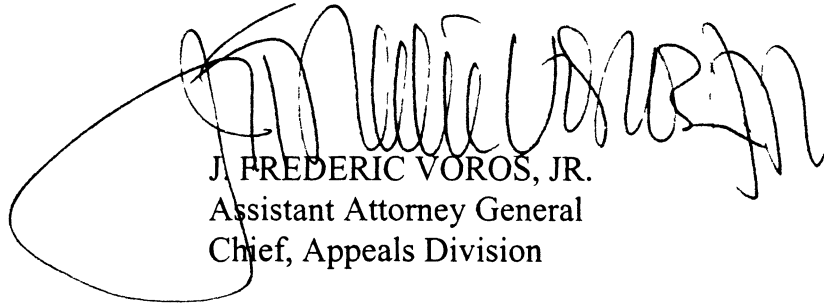
Defendant's sentence is far from unfair or excessive. The trial court considered and on the record discussed all the statutory sentences factors. If it slighted any factor, it was the second factor, the large number of defendant's victims. The fact is, like Helms, defendant here “views his situation differently than did the trial court.” *Id.*

CONCLUSION

Defendant's sentence should be affirmed.

RESPECTFULLY submitted on 9 May 2003.

MARK L. SHURTLEFF
Attorney General



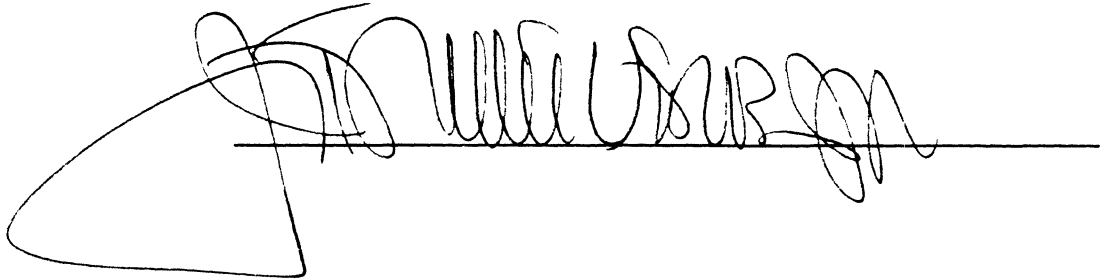
J. FREDERIC VOROS, JR.
Assistant Attorney General
Chief, Appeals Division

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Appellee were this 9 May
hand-delivered
2003 ~~mailed by first class mail~~ to the following:

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A handwritten signature in black ink, appearing to read "Kent R. Hart", is written over a horizontal line. To the left of the signature is a large, stylized, handwritten mark that resembles a large "K" or a checkmark.

Addenda

Addendum A

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

JOSE ORLANDO VALDOVINOS,

Defendant.

ORIGINAL

Case No. 011913948

Transcript of:

SENTENCING PROCEEDINGS

BEFORE THE HONORABLE ANN M. BOYDEN

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

APRIL 1, 2002

FILED DISTRICT COURT
Third Judicial District

NOV 13 2002

SALT LAKE COUNTY

REPORTED BY: CARLTON WAY, CSR
238-7532

[Signature]
Clerk

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A P P E A R A N C E S

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(P R O C E E D I N G S)

THE COURT: This is the matter of State of Utah v.
Jose Orlando Valdovinos.

Mr. Valdovinos is coming out.

We have an interpreter, and Mr. Esqueda is here for
the State.

Mr. Valdovinos is here now in court with an
interpreter to assist him.

Mr. Valdovinos is scheduled this morning for
sentencing on three First Degree Aggravated Robbery charges.

This matter has been set for sentencing a couple of
times, and in the process the State has dismissed the gun and
gang enhancements which were originally part of the plea
negotiations.

There has also been a diagnostic evaluation done down
at the Utah State Prison.

Now, I have reviewed all of the presentence
information as well as had an opportunity to go over at length
the evaluation that was done at the prison, the diagnostic.

And my understanding is, as I read all of this
information and as I reviewed the court documents, that I am
sentencing Mr. Valdovinos on three First Degree Felonies
today; each of them Aggravated Robberies but none carrying
enhancements.

Is that everyone's understanding of what is scheduled

1 today?

2 MR. ESQUEDA: That's the State's understanding.

3 MR. ARCHULETA: Yes, Your Honor, that is.

4 THE COURT: Mr. Archuleta, have you had an
5 opportunity to review both the presentence reports which were
6 done quite some time ago as well as the much more updated
7 diagnostic information?

8 MR. ARCHULETA: Your Honor, in fact, I took the same
9 path you did and read all of those documents over the weekend,
10 and I am prepared to address them.

11 THE COURT: Very well.

12 Is there any legal reason why then we cannot go
13 forward with sentencing today?

14 MR. ARCHULETA: None, Your Honor.

15 THE COURT: Thank you.

16 Mr. Archuleta, I'll let you proceed.

17 MR. ARCHULETA: Your Honor, there's several things
18 that stand out about this case: First of all, as a young man,
19 age 18 years old -- he was, actually, when this case started,
20 certified as an adult.

21 The second thing that we've consistently dealt with
22 when we got the plea set aside and took a different plea was
23 the factor of an extremely low IQ that diagnostic evaluation
24 found to be extremely low to borderline range of intellectual
25 ability. That intellectual ability to a large degree is

1 always going to be a handicap for Mr. Valdovinos and presented
2 itself as a handicap at the diagnostic unit.

3 The third thing that stands out about Mr. Valdovinos
4 as a juvenile, we have a limited juvenile history in that we
5 have a high school trespass and a curfew violation as
6 indicative of him being a law breaker. He dropped out of high
7 school in the ninth grade. He reads at a third-grade level.
8 He spells at a second-grade level. His arithmetic skills are
9 at a fifth-grade level. So it's not surprising that, at least
10 in his performance at the diagnostic evaluation, he didn't do
11 well.

12 After the evaluation was done, it seemed to me that
13 highlighted on perhaps the most important thing, and that he
14 is a person with an extremely low IQ, that he is easily
15 influenced by other gang members and a need to resolve that
16 issue with Mr. Valdovinos in taking him completely out of that
17 circle of influence.

18 Your Honor, over the weekend one of my clients sent
19 me some information on the confluence of gangs at the Utah
20 State Prison and how that relationship still exists in that
21 setting. I look at this evaluation clearly, and quite frankly
22 I have to agree with it, and I told his parents why. It is
23 recommended that he serve another year. He's almost served
24 one year in the Salt Lake County Jail.

25 And they suggest that he do certain things, indeed,

1 six other things, many of them that would go to make him at
2 least functional in society.

3 We do know that he can work. We do know that he's
4 been employed in the past. But they requested that he enter
5 and complete, if he's released, a treatment and/or educational
6 program. They'll leave that decision up to Adult Probation &
7 Parole, knowing that a traditional treatment program probably
8 wouldn't work for him with his limited intellectual abilities.

9 I think the most important one -- the two most
10 important to me, Your Honor -- are the intensive supervised
11 probation with a complete check on any further association
12 with gang members.

13 There is a limited history of substance abuse, Your
14 Honor. They also recommend no use of alcohol or elicit drugs.
15 With that, I would probably attach random urinalysis and no
16 association, of course, with anyone who uses; in addition,
17 putting a curfew limitation on him at least until that's been
18 adjusted by Adult Probation & Parole.

19 What we have then, Your Honor, is society's interest
20 in punishment. What we have is society's interest in working
21 towards rehabilitation. I don't want to excuse my client's
22 conduct, but I do realize that I myself have had much
23 difficulty with him because of his low IQ, trying to work with
24 him, trying to come to grasp of the immensity of the problem
25 that we face.

1 Quite frankly, Your Honor, I agree with the
2 evaluation and recommendation made. It seems to be candid, it
3 seems to be fair and it seems to be directed towards at least
4 complete justice.

5 Now, there is an earlier recommendation that he serve
6 three consecutive five to life's and that those run, of
7 course, on top of each other rather than together. I don't
8 see much value of that as that is an extremely harsh
9 punishment. We are really setting him up for a 15-year term,
10 taking him completely out of society.

11 He's still on probation. The neck remains around --
12 the noose remains around his neck.

13 At his credit, let me say this about his family: He
14 has a mother and father, step-father. They are very concerned
15 about him. They pride themselves on being law-abiding. Those
16 values that he's learned there will always be there. They are
17 prepared to support him, and they also agree with his
18 sentence, Your Honor, that's been recommended.

19 So, as I said, I think it's a fair sentence, and I
20 think it is an appropriate one under the circumstances. And I
21 would ask the Court to follow the sentencing recommendations
22 made on Page 5 of the diagnostic evaluation report.

23 Thank you, Your Honor.

24 THE COURT: Mr. Archuleta, I just want to clarify
25 with you, on Page 5 that, in fact, that is an alternative plan

1 that they are offering to me, that the diagnostic
2 recommendation is that Mr. Valdovinos be committed to the
3 prison. And if I chose not to follow that recommendation that
4 they offered, the alternative recommendation that you've
5 offered -- obviously, that's the recommendation you are asking
6 that I follow.

7 But was it clear in your explanation to
8 Mr. Valdovinos' parents that the recommendation of the
9 diagnostic is for commitment to prison?

10 MR. ARCHULETA: It was, Your Honor. And we talked
11 about whether or not the Court would consider a consecutive or
12 concurrent sentence, which in the earlier presentence report
13 recommends that they run consecutive and not concurrent.

14 THE COURT: All right. But I am not talking about
15 the presentence report that was done a couple of months ago.

16 MR. ARCHULETA: I understand. I understand there is
17 a recommendation for prison.

18 THE COURT: I just want to make sure that that was
19 all discussed and that everyone recognizes what information
20 that I am dealing with and I'm dealing with all the
21 information.

22 MR. ARCHULETA: I understand you are really dealing
23 with the three recommendations, the three, five to life's
24 stacked on each other, the recommendation of incarceration.
25 But even if you send him to prison, even if you do that, you

1 still are going to have to deal with the consecutive or a
2 concurrent in the alternative recommendation.

3 THE COURT: Thank you. That's where I am, and I want
4 to make sure that that's where everyone else was.

5 Before I let Mr. Valdovinos respond, if he'd like to,
6 I would like to hear from the State.

7 Mr. Esqueda.

8 MR. ESQUEDA: Well, now that that's been clarified,
9 that all along it's been a prison recommendation from the
10 State, the problem I have with Mr. Valdovinos and his
11 insistence to rely upon his perhaps mental disability is the
12 fact that he knew what he was doing all along when he
13 committed these crimes. And they're heinous crimes, at
14 gunpoint, threatening people, tying people up, stealing their
15 property.

16 But even in the diagnostic he mentions what easy
17 targets they were after; that perhaps he should be rewarded
18 because his targets were drug dealers. And he doesn't
19 understand why this is happening because he meant to hit drug
20 dealers. The problem is: He didn't hit the drug dealer
21 houses and at least on one occasion this poor woman who
22 doesn't even know what's going on before there is a gun stuck
23 in her face and these gentlemen are in her home ransacking her
24 property. And then they finally realize that, "Look, this
25 isn't a drug dealer house. Whoops, I am sorry."

1 But the important part of that is: He realizes what
2 his intent was. He realizes that he's out there to commit a
3 crime and -- for his own -- by his own admission, he thinks
4 that that's a good thing because he's going to rip off drug
5 dealers. For some reason the law doesn't protect them or the
6 law protects him more, which is a misstatement.

7 And then the ultimate problem is that they hit the
8 wrong homes, Judge, and terrorized innocent families.

9 The other thing I noticed about the diagnostic
10 evaluation is his commitment to his gangs and his gang ties.
11 I think it was a doctor's report. I have it on Page 22 from
12 the doctor, Susan Erickson, which they describe his concrete
13 thinking in that he refuses to disclose his whole activities
14 with his gang partners. He discloses to -- he fails to
15 disclose the level and the nature of his association with gang
16 members. And his -- this just demonstrates his entire
17 commitment to his gang friends. I mean, that's the way they
18 live their lives.

19 I don't doubt he comes from a very good family and
20 that his parents support him, but he's rejected that and chose
21 a different family. And that's what makes him so dangerous.

22 He mentions, "Well, some buddies of mine said we
23 could make some easy money and I just went along with it."
24 That's his thought process. He's with that family now, and
25 there's nothing to change that. There's nothing that's

1 indicated in the diagnostic report that that has changed; nor
2 will it because he's so entrenched in that activity.

3 The presentence report indicates that there should be
4 a consecutive sentence. And I think it should be, as well,
5 because these are all separate cases, Judge. And to combine
6 them together would be an injustice to all of those victims
7 out there. Half of them -- oh, well, all of them -- I don't
8 believe any one of our victims are here today because they
9 didn't want to come to court for fear of retaliation; maybe
10 not from Mr. Valdovinos but someone who's associated with his
11 gang who's still out there. That's why they don't show up.

12 But they call me; "Is everything okay? What's going
13 on? What's happening with the codefendants?" They are active
14 participants, the victims are in this case.

15 He's earned a prison sentence. He's earned it
16 because he is a gang member and because he used a gun and
17 because he terrorized people on three separate occasions.
18 That's just these cases. The other cases were dismissed.
19 That's just three charges out of all these counts, Judge, so
20 he's already reaped the benefits.

21 Plus his attorney, Mr. Archuleta, came to me and
22 argued again for even more reduction in regards to the gang
23 enhancements and the gun enhancements, and I agreed to that,
24 as well because Mr. Archuleta did his job.

25 So, to say that a year in jail and probation is

1 enough here, it's not. And to say one prison commitment is
2 enough, that's just not accurate considering the terror that
3 this man committed. And that's exactly what it is, terror --
4 breaking into the sanctity of someone's home and pointing a
5 gun at them and stealing their property and destroying their
6 lives and their trust.

7 I believe he's earned a consecutive sentence and the
8 recommendations are appropriate and he should be imprisoned
9 for a very long time, Judge.

10 THE COURT: Thank you.

11 Are there any other people from the State,
12 Mr. Esqueda, either victims or anyone else, who wishes to
13 address the Court?

14 MR. ESQUEDA: No, Your Honor.

15 THE COURT: And I have reviewed all of the
16 information I have received, but I have not received anything
17 from the victims.

18 All right. Thank you.

19 Response, Mr. Archuleta.

20 MR. ARCHULETA: The picture he's painted of the
21 robberies isn't quite accurate, Your Honor. It's true that
22 these are heinous crimes, but what he doesn't point out is
23 that in at least two instances some of these people were
24 terrorized, and I agree with that. But, for example, one man,
25 an older man, needed his medication. One of the victims said,

1 "Have a heart." It was this man that went upstairs and got
2 him his medication. Those instances happened on two separate
3 occasions where -- and I don't mean to take the loss off of
4 the nature of the crime but to show that portraying him as
5 vicious and engaging and that, that isn't quite the picture.

6 There were older gang members there. This is like a
7 lamb that can be led anywhere. He's 18 years old. Let's
8 never forget that he has a 66 IQ, borderline low, Your Honor.

9 I don't make excuses for his conduct, but what I look
10 at is, at least as I see the sentencing part of it is: Can we
11 effect a rehabilitation of him and yet impose the necessary
12 punishment that's warranted in this case?

13 Being locked up for 310 days is punishment. Being
14 locked up and outside of your life for another year is
15 punishment. That's a whole lot of the time to think about the
16 wrong you did to others.

17 Probation is no more than a noose around your neck.
18 And the Court could order any sentence it wanted in terms of
19 consecutive, and still impose probation with even a greater
20 noose around his neck.

21 I thought as seriously as Mr. Esqueda does about this
22 sentence, Your Honor, looking at the nature of the crime, and
23 I concluded with my best opinion, looking at the need for
24 justice, punishment and rehabilitation, the alternative was a
25 good resolution; particularly when you look at how it locks

1 his hands with intensive supervised probation, a whole number
2 of monitoring checks. It works towards rehabilitation. I
3 suggest the Court give him this chance. And I'll submit it on
4 that basis, Your Honor.

5 THE COURT: Mr. Archuleta, does Mr. Valdovinos wish
6 to speak? You have spoken and explained to me and answered
7 some questions that I've had. If he wishes to speak, now is
8 his opportunity.

9 THE DEFENDANT: I want to change. I'm changing. I
10 want another chance. I can serve another year. I regret what
11 I did. I wanted to ask forgiveness to the Court for what I
12 did.

13 THE COURT: Thank you.

14 I appreciate everyone's work on this. I appreciate
15 the input that's come in. Sentencing has been scheduled a
16 number of times and gone on a number of times. And I
17 appreciate the work and thought that both Mr. Archuleta and
18 Mr. Valdovinos have put into this and that the State has put
19 into this with Mr. Esqueda. And as Mr. Archuleta
20 characterised, the attorneys and the parties obviously put a
21 lot of thought into the sentencing.

22 But with all due respect, I don't think any of them
23 put any more than I have to put in because I'm the one that's
24 ultimately got to determine what the fair and just sentence
25 is.

1 I have looked at all of this information, and I have,
2 quite frankly, agonized over it for quite some time because I
3 take very seriously my responsibility to do justice for you as
4 a defendant before me for sentencing and also my
5 responsibility to this community.

6 I'm a judge and I have to look at all of the factors,
7 and I have done that. And I have done it seriously, and I
8 feel that I'm ready to do the sentencing today.

9 Mr. Valdovinos, I have reviewed all of the
10 information, and this is a very, very egregious crime --
11 people were traumatized, people were -- little children sat
12 and watched their parents be traumatized. And while there may
13 be some mitigation that you went up and got medication for
14 someone because you were being merciful to them, there was no
15 reason that they ever needed to be in that position.

16 This is a serious home invasion series, series of
17 home-invasion robberies -- more than one, more than two, there
18 were several counts. And I need to take the very, very
19 egregious, violent nature of these offenses into my
20 consideration at sentencing.

21 I've also taken into consideration your disabilities,
22 Mr. Valdovinos. I realize that you are dealing with a low IQ.
23 And I know what that means, and I know what I can expect and
24 what I can't expect. And it is an explanation to a certain
25 extent for some of what I have read in all of this information

1 but it does not entirely excuse everything.

2 You have shown that you understood the intent of what
3 you did. You have shown that you chose to follow by being
4 manipulated, perhaps, but you still were able to be
5 manipulated by them and did follow after gang friends rather
6 than follow in what you had clearly been trained to do by your
7 supportive, law-abiding family. And that's why I have got to
8 sentence you today.

9 Mr. Valdovinos, there's been an incredible amount of
10 negotiation, and it has been taken into consideration before
11 at many steps along this case that you do have a low IQ and
12 are dealing with an intellectual capacity that is below
13 normal. But that can only be one factor. And I can only take
14 it so far.

15 It's also clear from all of this presentence
16 information and the diagnostic that you are still a very real
17 danger to the community, that you still continue to follow
18 along the gang member paths rather than the supportive family
19 path that Mr. Archuleta has argued to me.

20 The 60-day diagnostic evaluation was precisely so
21 that I could get an idea if you were conducive to probation
22 and if treatment was something that would help, and it is
23 clear from the results that it is not.

24 Part of that is explained because you might not be
25 able to follow those traditional treatment programs. Part of

1 it is explained because you weren't willing to let go of your
2 friendship and association with the gangs and do what you
3 needed to do in order to convince me what you are trying to
4 tell me today, that you want to change. There's just no
5 indication that you are really willing to do what you need to
6 do.

7 As serious as these crimes are, I now need to look to
8 what is the appropriate punishment, what is the appropriate
9 safety for the community and what is the appropriate treatment
10 for you.

11 I have reviewed at length the recommendation, the
12 alternative recommendations, and they simply do not meet the
13 needs of this sentencing. You are not a candidate for
14 probation, Mr. Valdovinos, and I am not going to follow the
15 alternative recommendations that have been offered by the
16 diagnostic even though their straight recommendation was that
17 you be committed forthwith to the Utah State Prison.

18 Having made that decision, Mr. Valdovinos, I need to
19 determine how long that sentence is appropriate. And, again,
20 I need to look at all of the factors. There were several
21 different robberies, several different victims. Even when --
22 even if your perception was that you were going in and doing
23 this to drug dealers because it was what they deserved, the
24 fact that you hit the wrong home and the fact that it happened
25 again and again and again is concerning to me. And there is

1 no legal basis and no justice basis for making these
2 concurrent.

3 I'm going to sentence you on each of the three First
4 Degree Robberies that are before me to five years to life in
5 the Utah State Prison with them running consecutively to each
6 other.

7 I'm not imposing any additional fine. Restitution
8 will be up to the Board of Pardons. They will have the
9 jurisdiction over that.

10 This is a harsh -- harshest sentence that I can
11 impose, but it is the only just one given the negotiations
12 that have happened to this point and given the underlying
13 difficulties and underlying behavior and conduct in this case.
14 That will be the sentence.

15 MR. ARCHULETA: Your Honor, I hate to ask the Court
16 to review just one matter on the sentence --

17 THE COURT: You may.

18 MR. ARCHULETA: -- and I don't mean to take the Court
19 at issue in anything that's said. Its assessment is fair.
20 Let me make that clear. But this is an 18 year old boy. I
21 don't know what 15 years looks like on a consecutive sentence
22 under the Guidelines. I don't think it is, in fact, 15 years.

23 THE COURT: It may not be. And the Board of Pardons
24 will certainly look to when the appropriate time to review
25 this case is. But the factors I must look to for whether a

1 case is sentenced concurrently or consecutively --

2 MR. ARCHULETA: Just, one thing, Your Honor. He has
3 been incarcerated for 310 days.

4 THE COURT: It's absolutely appropriate that he get
5 credit for that. Again, it is the Board of Pardons' decision,
6 but it is my recommendation and it is appropriate. He has
7 been held on these matters, and part of it was the diagnostic,
8 and clearly all of that is appropriate, that he be given
9 credit for that. And the Board of Pardons will, I have great
10 confidence, work through the guidelines, as well, the
11 guidelines and directions that I had to look at and the
12 indicators that I used in my decision, and it is appropriate
13 to run these consecutive rather than concurrent.

14 Thank you. I appreciate it.

15 (Hearing adjourned)

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C E R T I F I C A T E

I, CARLTON WAY, hereby certify that I attended and reported, as official court reporter, the proceedings in the the above-entitled and numbered matter before Ann M. Boyden and that the foregoing is a true and correct transcription of my stenographic notes thereof.

Dated at Salt Lake City, Utah, this 12th day of November, 2002.



CARLTON WAY
OFFICIAL COURT REPORTER

Addendum B

THIRD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 011913948 FS
	:	
JOSE ORLANDO VALDOVINOS,	:	Judge: ANN BOYDEN
Defendant.	:	Date: April 1, 2002

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Interpreter: PRESENT

DEFENDANT INFORMATION

Language: SPANISH

Date of birth: May 23, 1983

CAT/CIC

Tape Number: 2002-28 Tape Count: 90152

CHARGES

1. AGGRAVATED ROBBERY - 1st Degree Felony
Plea: Guilty - Disposition: 09/24/2001 {Guilty Plea}

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than five years and which may be life in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

Case No: 011913948
Date: Apr 01, 2002

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

PRISON SENTENCE TO RUN CONSECUTIVELY WITH 011913950 & 011913951.

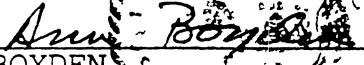
SENTENCE RECOMMENDATION NOTE

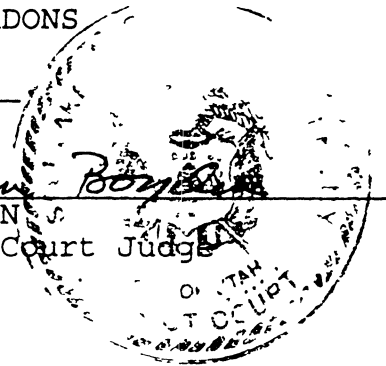
RECOMMEND CREDIT FOR TIME SERVED OF 310 DAYS

SENTENCE TRUST NOTE

RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS

Dated this 1 day of April, 2002


ANN BOYDEN
District Court Judge



Addendum C

FILED DISTRICT COURT
Third Judicial District

APR 30 2002

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,)	
)	NOTICE OF APPEAL
Plaintiff,)	
)	
v.)	Case No. 011913948
)	
JOSE ORLANDO VALDOVINOS,)	Judge Ann Boyden
)	
Defendant.)	

Defendant, Jose Orlando Valdovinos, hereby files this Notice of Appeal from the judgement and commitment entered against him in the above-entitled matter on or about April 1, 2002. This Notice of Appeal is therefore timely filed pursuant to rule 4, Utah Rules of Appellate Procedure because it is being filed within thirty days of the judgement sought to be reviewed.

Respectfully submitted this 30 day of APRIL, 2002.

Joe Hara

Addendum D

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOSE ORLANDO VALDOVINOS

CASE NUMBER 011913950 State Felony

CHARGES

Charge 1 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony Plea: September 24, 2001 Guilty

Disposition: September 24, 2001 {Guilty Plea}

Charge 2 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 3 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 4 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 5 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 6 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 7 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 8 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 9 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed
Charge 10 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 11 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 12 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 13 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 14 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 15 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 16 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 17 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 18 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 19 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 20 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony

Disposition: September 24, 2001 Dismissed
Charge 21 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 22 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 23 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 24 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 25 - 76-8-508 - TAMPER W/ WITNESS/JUROR
Attributes: Gang. Weapon.
2nd Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 26 - 76-6-203 - AGGRAVATED BURGLARY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

CURRENT ASSIGNED JUDGE
ANN BOYDEN

PARTIES

Defendant - JOSE ORLANDO VALDOVINOS
Represented by: ROBERT M. ARCHULETA

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: JOSE ORLANDO VALDOVINOS
Date of Birth: May 23, 1983
Jail Booking Number:
Law Enforcement Agency: SALT LAKE POLICE
LEA Case Number: 2001-71876
Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number 1010858
Sheriff Office Number 257621
Violation Date April 24, 2001 782 WEST FREMONT AVE

ACCOUNT SUMMARY

CASE NOTE
DAO 1010858

PROCEEDINGS

09-10-01 INITIAL APPEARANCE scheduled on September 17, 2001 at 08 30 AM
in Fourth Floor - S42 with Judge BOYDEN laniv
09-10-01 Note CASE FILED BY TIMMERMAN OF SLC POLICE CASE BINDOVER
FROM JV COURT WARRANT FAXED TO JAIL laniv
09-10-01 Case filed by laniv laniv
09-10-01 Judge BOYDEN assigned laniv
09-17-01 INITIAL APPEARANCE scheduled on September 24, 2001 at 08 30 AM
in Fourth Floor - S42 with Judge BOYDEN patd
09-17-01 Minute Entry - Minutes for Arraignment State patd
Judge ANN BOYDEN
PRESENT
Clerk patd
Prosecutor ESQUEDA, CARLOS A
Defendant not present
Defendant's Attorney(s) ROBERT ARCHULETA

Video
Tape Number 2001-47 Tape Count 105414

HEARING

DEFT NOT TRANSPORTED C/O HEARING CONTINUED
INITIAL APPEARANCE is scheduled
Date 09/24/2001
Time 08 30 a m
Location Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860
Before Judge ANN BOYDEN
09-24-01 Minute Entry - Minutes for Arraignment meloniep
Judge ANN BOYDEN
PRESENT

Clerk: meloniep
Prosecutor: LEMCKE, HOWARD R
Defendant
Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video
Tape Number: 2001-48 Tape Count: 1000

ARRAIGNMENT

Defendant waives reading of Information.
Advised of rights and penalties.
Defendant waives preliminary hearing.
Defendant is arraigned.
Defendant waives right to a trial by jury.
Presentence Investigation ordered.
The Judge orders Adult Probation & Parole to prepare a pre-sentence report.
DEFT PLED GUILTY TO COUNT 1 AGG ROBBERY, STATE DISMISSES ALL OTHER COUNTS
SENTENCING is scheduled.

Date: 11/19/2001

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Note: ARRAIGNMENT minutes modified.	meloniep
09-24-01 SENTENCING scheduled on November 19, 2001 at 08:30 AM in Fourth Floor - S42 with Judge BOYDEN.	meloniep
09-24-01 Note: ARRAIGNMENT minutes modified.	meloniep
11-15-01 Note: FILED AP&P PSR	patd
11-15-01 Filed: DEFENSE MOTION TO CONT SENT	meloniep
11-15-01 Filed: AP&P PSR	meloniep
11-19-01 SENTENCING scheduled on December 27, 2001 at 09:00 AM in Fourth Floor - S42 with Judge BOYDEN.	patd
11-19-01 Minute Entry - Minutes for SENTENCING	patd
Judge: ANN BOYDEN	
PRESENT	
Clerk: patd	
Reporter: SCHULTZ, KATHLEEN	
Prosecutor: POSTMA, MICHAEL E	
Defendant	

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video

Tape Number: 2001-71 Tape Count: OFF

HEARING

ON DEFENSE MOTION C/O SENTENCING CONTINUED
SENTENCING.

Date: 12/27/2001

Time: 09:00 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

12-20-01 Filed: Transcript of change of plea dated 9-24-01 filed under
case number 011913948 bunnyn

12-27-01 SENTENCING scheduled on January 28, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd

12-27-01 Minute Entry - Minutes for SENTENCING patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: WISSLER, SIRENA M.

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC

Tape Number: 2001 Tape Count: 92453

HEARING

C/O SENTENCING CONTINUED, MOTION TO SET ASIDE PLEA ALSO WILL BE
HEARD
SENTENCING.

Date: 01/28/2002

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-28-02 Note: Filed State's memorandum in Opposition to Defendant's
Motion to Set Aside Guilty Plea patd
01-28-02 Minute Entry - Minutes for SENTENCING patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WARNICK, SUZANNE

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC

Tape Number: 2002-8 Tape Count: 92824

HEARING

COURT GRANTS STATE'S MOTION TO WITHDRAW GANG & GUN
ENHANCEMENTS

C/O DEFT REFERRED TO UTAH STATE PRISON FOR 60 DAY DIAGNOSTIC
EVALUATION
SENTENCING.

Date: 04/01/2002

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-29-02 SENTENCING scheduled on April 01, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd

03-27-02 Note: Diagnostic Report patd

04-01-02 Case Closed patd

Disposition Judge is ANN BOYDEN patd

04-01-02 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Interpreter: PRESENT

Language: SPANISH

CAT/CIC

Tape Number: 2002-28 Tape Count: 90152

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than five years and which may be life in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

PRISON SENTENCE TO RUN CONSECUTIVELY WITH 011913948 & 011913951
SENTENCE RECOMMENDATION NOTE

RECOMMEND CREDIT FOR TIME SERVED OF 310 DAYS

SENTENCE TRUST NOTE

RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS
10-10-02 Filed: Transcript of scheduled sentencing hearing dated January
28, 2002, Suzanne Warnick, Court Reporter, filed under case
number 011913948 bunnyn

THIRD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 011913948 FS
	:	
JOSE ORLANDO VALDOVINOS,	:	Judge: ANN BOYDEN
Defendant.	:	Date: April 1, 2002

PRESENT

Clerk: patd
Reporter: WAY, CARLTON
Prosecutor: ESQUEDA, CARLOS A
Defendant
Defendant's Attorney(s): ARCHULETA, ROBERT M.
Interpreter: PRESENT

DEFENDANT INFORMATION

Language: SPANISH
Date of birth: May 23, 1983
CAT/CIC
Tape Number: 2002-28 Tape Count: 90152

CHARGES

1. AGGRAVATED ROBBERY - 1st Degree Felony
Plea: Guilty - Disposition: 09/24/2001 {Guilty Plea}

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than five years and which may be life in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

Case No: 011913948
Date: Apr 01, 2002

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

PRISON SENTENCE TO RUN CONSECUTIVELY WITH 011913950 & 011913951.

SENTENCE RECOMMENDATION NOTE

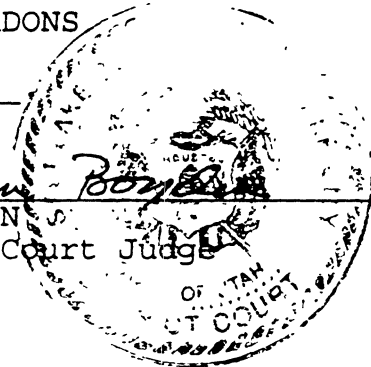
RECOMMEND CREDIT FOR TIME SERVED OF 310 DAYS

SENTENCE TRUST NOTE

RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS

Dated this 1 day of April, 2002


ANN BOYDEN
District Court Judge



3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOSE ORLANDO VALDOVINOS

CASE NUMBER 011913950 State Felony

CHARGES

Charge 1 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony Plea: September 24, 2001 Guilty

Disposition: September 24, 2001 {Guilty Plea}

Charge 2 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 3 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 4 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 5 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 6 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 7 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 8 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed

Charge 9 - 76-6-302 - AGGRAVATED ROBBERY

Attributes: Gang. Weapon.

1st Degree Felony

Disposition: September 24, 2001 Dismissed
Charge 10 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 11 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 12 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 13 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 14 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 15 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 16 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 17 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 18 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 19 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 20 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony

Disposition: September 24, 2001 Dismissed
Charge 21 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 22 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 23 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 24 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 25 - 76-8-508 - TAMPER W/ WITNESS/JUROR
Attributes: Gang. Weapon.
2nd Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 26 - 76-6-203 - AGGRAVATED BURGLARY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

CURRENT ASSIGNED JUDGE
ANN BOYDEN

PARTIES

Defendant - JOSE ORLANDO VALDOVINOS
Represented by: ROBERT M. ARCHULETA

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: JOSE ORLANDO VALDOVINOS
Date of Birth: May 23, 1983
Jail Booking Number:
Law Enforcement Agency: SALT LAKE POLICE
LEA Case Number: 2001-71876
Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number: 1010858
Sheriff Office Number: 257621
Violation Date: April 24, 2001 782 WEST FREMONT AVE

ACCOUNT SUMMARY

CASE NOTE

DAO 1010858

PROCEEDINGS

09-10-01 INITIAL APPEARANCE scheduled on September 17, 2001 at 08:30 AM
in Fourth Floor - S42 with Judge BOYDEN. laniv
09-10-01 Note: CASE FILED BY TIMMERMAN OF SLC POLICE CASE BINDOVER
FROM JV COURT WARRANT FAXED TO JAIL laniv
09-10-01 Case filed by laniv laniv
09-10-01 Judge BOYDEN assigned. laniv
09-17-01 INITIAL APPEARANCE scheduled on September 24, 2001 at 08:30 AM
in Fourth Floor - S42 with Judge BOYDEN. patd
09-17-01 Minute Entry - Minutes for Arraignment State patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Prosecutor: ESQUEDA, CARLOS A
Defendant not present
Defendant's Attorney(s): ROBERT ARCHULETA

Video

Tape Number: 2001-47 Tape Count: 105414

HEARING

DEFT NOT TRANSPORTED C/O HEARING CONTINUED
INITIAL APPEARANCE is scheduled.

Date: 09/24/2001

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Minute Entry - Minutes for Arraignment

meloniep

Judge: ANN BOYDEN

PRESENT

Clerk: meloniep
Prosecutor: LEMCKE, HOWARD R
Defendant
Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video
Tape Number: 2001-48 Tape Count: 1000

ARRAIGNMENT

Defendant waives reading of Information.
Advised of rights and penalties.
Defendant waives preliminary hearing.
Defendant is arraigned.
Defendant waives right to a trial by jury.
Presentence Investigation ordered.
The Judge orders Adult Probation & Parole to prepare a pre-sentence report.
DEFT PLED GUILTY TO COUNT 1 AGG ROBBERY, STATE DISMISSES ALL OTHER COUNTS
SENTENCING is scheduled.

Date: 11/19/2001
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Note: ARRAIGNMENT minutes modified. meloniep
09-24-01 SENTENCING scheduled on November 19, 2001 at 08:30 AM in Fourth Floor - S42 with Judge BOYDEN. meloniep
09-24-01 Note: ARRAIGNMENT minutes modified. meloniep
11-15-01 Note: FILED AP&P PSR patd
11-15-01 Filed: DEFENSE MOTION TO CONT SENT meloniep
11-15-01 Filed: AP&P PSR meloniep
11-19-01 SENTENCING scheduled on December 27, 2001 at 09:00 AM in Fourth Floor - S42 with Judge BOYDEN. patd
11-19-01 Minute Entry - Minutes for SENTENCING patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Reporter: SCHULTZ, KATHLEEN
Prosecutor: POSTMA, MICHAEL E
Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video

Tape Number: 2001-71 Tape Count: OFF

HEARING

ON DEFENSE MOTION C/O SENTENCING CONTINUED
SENTENCING.

Date: 12/27/2001

Time: 09:00 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

12-20-01 Filed: Transcript of change of plea dated 9-24-01 filed under
case number 011913948 bunnyn

12-27-01 SENTENCING scheduled on January 28, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd

12-27-01 Minute Entry - Minutes for SENTENCING patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: WISSLER, SIRENA M.

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC

Tape Number: 2001 Tape Count: 92453

HEARING

C/O SENTENCING CONTINUED, MOTION TO SET ASIDE PLEA ALSO WILL BE
HEARD
SENTENCING.

Date: 01/28/2002

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-28-02 Note: Filed State's memorandum in Opposition to Defendant's
Motion to Set Aside Guilty Plea patd

01-28-02 Minute Entry - Minutes for SENTENCING patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WARNICK, SUZANNE

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC

Tape Number: 2002-8 Tape Count: 92824

HEARING

COURT GRANTS STATE'S MOTION TO WITHDRAW GANG & GUN
ENHANCEMENTS

C/O DEFT REFERRED TO UTAH STATE PRISON FOR 60 DAY DIAGNOSTIC
EVALUATION
SENTENCING.

Date: 04/01/2002

Time: 08:30 a.m.

Location: Fourth Floor - S42

Third District Court

450 South State

SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-29-02 SENTENCING scheduled on April 01, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd

03-27-02 Note: Diagnostic Report patd

04-01-02 Case Closed patd

Disposition Judge is ANN BOYDEN patd

04-01-02 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME patd

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Interpreter: PRESENT

Language: SPANISH

CAT/CIC

Tape Number: 2002-28 Tape Count: 90152

SENTENCE PRISON

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SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

PRISON SENTENCE TO RUN CONSECUTIVELY WITH 011913948 & 011913951
SENTENCE RECOMMENDATION NOTE

RECOMMEND CREDIT FOR TIME SERVED OF 310 DAYS

SENTENCE TRUST NOTE

RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS
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